October 10, 2000

Mary L. Cottrell, Secretary

Department of Telecommunications and Energy

One South Station, 2nd Floor

Boston, Massachusetts 02110

Re: Fitchburg Gas & Electric Light Company - D.T.E. 00-66

Dear Secretary Cottrell:

On August 1, 2000, Fitchburg Gas & Electric Light Company ("the Company") requested authorization from the Department of Telecommunications and Energy ("Department" or "DTE") to increase, effective September 1, 2000, its rate for Standard Offer service from 3.8¢/kWh to 4.346¢/kWh. ("**Fitchburg Filing**") This 14 percent increase in the Standard Offer service rate was estimated to result in bill increases ranging from 6.6 percent for G-3 customers and 6.3 percent for residential customers on the low income rate to 4.7 percent for customers on the non-discounted residential rate. Because the resulting rates would not have maintained the rate reduction provided for under the terms of the 1997 Restructuring Act -- fifteen percent less than rates in effect in August, 1997, adjusted for inflation -- as those terms have been implemented by the Department,[(1)] on August 22, 2000, the Attorney General requested that the Department suspend the proposed increase and open an investigation into the propriety of the proposed rates. On August 30, 2000, the Company responded to the Attorney General's request, arguing that the proposed increase should be approved because "neither the [Restructuring Act] nor the Department's rules prohibit recognition of the extraordinary fuel increases in the inflation adjustment."[(2)] The Department held an informal, off-the-record conference on September

27 to address technical aspects of the Company's filing. Pursuant to the schedule set forth in the Department's September 8, 2000 procedural order, the Attorney General files this letter as his comments on the Company's proposal.

The Attorney General submits that the Department should reject the Company's position that the proposed increases in Standard Offer service rates comply with the rate reduction provisions of G.L. c. 164, § 1B(b) and, instead, should immediately initiate a proceeding to carry out the inquiry mandated by G.L. c. 164, § 1G(c)(3). The Company's position on the rate reduction standard ignores the plain meaning of the Act as well as the Department's implementation of that legislation. The Restructuring Act creates a simple rate reduction standard and while it does not require the Department to ignore the recent extraordinary increases in fuel prices or to reject automatically any proposed rate increases that do not meet the 15 percent rate reduction benchmark, it does provide expressly that in circumstances such as those at hand that the Department must:

explore any and all possible mechanisms and options within the limits of the constitution which may be available to the department to achieve compliance ... [and] consider ... proposals submitted by other parties, including but not limited to the office of the attorney general, outlining means and mechanisms by which a company could further mitigate its assets in order to comply with said rate reduction of 15 per cent.

G.L. c. 164, § 1G(c)(4). The Attorney General submits that the Department has not yet undertaken to conduct the required inquiry and urges the Department to initiate the appropriate proceeding immediately. In particular, the Attorney General submits that the Department should act immediately to carry out the mandate of the Restructuring Act as well as protect the public interest by:

- Initiating the necessary investigation to carry out the inquiry required by G.L. c. 164, § 1G(c)(4), *i.e.*, to "explore any and all possible mechanisms and options ...to achieve compliance with the" 15 rate reduction requirement and "consider ... proposals ... outlining means and mechanisms by which a company could further mitigate its assets in order to comply with said rate reduction of 15 per cent."

- Requiring the Company to make levelized billing options available to its customers for at least forty-five days after the effective date of the increase in its rate for Standard Offer service.

- Initiating a "generic" investigation to determine a single, uniform mechanism to implement fuel price adjustments to Standard Offer service rates.

In addition, the Attorney General urges the Department to give prompt attention to issues raised in other proceedings long-pending before the Department, the timely resolution of which could provide the Company's customers with mitigation of the impact of increases resulting from the recent increase in the cost of fuel.

The Company's Proposal

In its August 1 filing, the Company explained that the proposed increase in its Standard Offer service rate is provided for under the terms of its Department approved tariff for Standard Offer service. In particular, the Company referred to tariff provisions calling for monthly adjustments to the Standard Offer service rate in the event that a twelve month moving average of fuel prices (No. 6 residual fuel oil and natural gas) included in a "Fuel Adjustment" formula exceed certain predetermined "trigger" levels that represent significant increases from the levels anticipated at the time of the tariff's approval. The tariff provides that the company's Standard Offer service rate is to be adjusted in such circumstances by applying the ratio produced by the Fuel Adjustment formula to the otherwise applicable Standard Offer rate. The ratio produced by the formula is defined to be effective only if greater than one, so the amount of the "adjustment" required by the formula is equal to the difference between the product produced by the applying the ratio and the applicable standard offer rate. Using pricing data for the most recent month for which complete information was available (June, 2000), the formula indicated that the appropriate adjustment to the Company's Standard Offer rate is 0.6346¢ = Ratio(1.1436) × Rate(3.8¢) - Rate(3.8¢). **Fitchburg Filing**, pp. 1-2 and Exhibit 1: M.D.T.E. No. 44, § 9 (Sheets 4-6).[(3)] Under the terms of the Company's total requirements contract for power from Constellation Power Source to supply its Standard Offer service loads, the Company is required to credit to Constellation all incremental revenues it collects as a result of the Fuel Adjustment.

The Proposed Rates Do Not Comply With The Rate Reduction

Provisions of G.L. c. 164, § 1B(b)

The Restructuring Act provides that for the period from September 1, 1999 through December 31, 2004, electric company customers receiving Standard Offer service will enjoy a 15 percent rate reduction "applied against the rate ***adjusted for inflation*** from August 1997." G.L. c. 164, § 1B(b)(emphasis supplied). While the rates proposed by the Company do not satisfy the standard as it has been implemented by the Department (rate must fall within an inflation cap determined by applying the Consumer Price Index to 1997 benchmark rates[(4)]), the Company asserts that its proposal should be found to comply with the provision of the Act because "neither the [Restructuring Act] nor the Department's rules prohibit recognition of the extraordinary fuel increases in the inflation adjustment." August 30, 2000, letter, p. 2. This position is without merit.

The Act does not define the term "inflation," but absent some specific qualifying language, it is not reasonable to interpret that term to reference some index of price levels for specific inputs into the services provided by electric companies, *i.e.*, a G.L. c. 164, § 94G fuel clause-like mechanism. Where a statute is silent on the meaning of a word, "words and phrases [in a statute] shall be construed according to [their] common and approved usage," G.L. c. 4, § 6; *Hallett v. Contributing Retirement Appeal Board*, 431 Mass. 66, 68; 725 N.E.2d 222, 224 (2000), and reference can be made to the dictionary definition of words. *Building Inspector of Mansfield v. Curvin*, 22 Mass.App.Ct. 401, 402, 494 N.E.2d 42, 43 (1986).

The American Heritage Dictionary defines "inflation" as "a persistent increase in the level of consumer prices . . . caused by an increase in available currency and credit beyond the proportion of available good and services." *American Heritage Dictionary*, p. 697 (3rd Ed. 1993). Thus, in the absence of statutory language qualifying the use of the word "inflation," the Act should be interpreted to provide that compliance with rate reductions provisions is to be determined after adjustment for intervening changes in the aggregate level of prices, *i.e.*, changes in the purchasing power of the dollar, and without any additional adjustment for changes in the prices of specific input(s) into services provided by the Company. Some may question whether the most appropriate measure of inflation is the U.S. Department of Labor's Consumer Price Index for entire domestic economy as opposed to the CPI for Massachusetts or the so-called "Implicit Price Deflator" reported by the U.S. Department of Commerce, but there is no basis whatsoever to suggest that the term "inflation" refers to a fuel clause-like mechanism. The General Court was clear that the rate reduction provisions of the Act were intended to provide a consumer benefit. St.1997, c. 164, § 1(w)("The initial benefit [shall be] ... consumer electricity rate reductions"). In this context, then, it is necessary that the Department implement the mandate that "the economic value of the rate reduction ... be maintained during the standard service transition rate period" by tying any inflation adjustments to a measure of the rate of inflation experienced by consumers. G.L. c. 164, § 1B(e).

This conclusion is consistent with the Department's past interpretation of the Act, an interpretation that the Supreme Judicial Court has explained should be given deference, *Massachusetts Municipal Wholesale Electric Company v. Massachusetts Energy Facilities Siting Council*, 411 Mass. 183, 191, 580 N.E.2d 1028, 1033 (1991), and it achieves a common sense result that advances the legislative goal of a rate reduction standard that is simple to administer and to explain, as well as a standard that can be applied uniformly across companies. The alternative would expose the Act's rate reduction standard to an endless number of adjustments for changes in the price of other specific inputs into the services provided by electric companies. Interest, property tax,

and postage rate changes also have impacts on electric company costs that are disproportionate to their impact on the overall rate of inflation; whereas food, housing and recreation price changes have an impact on the overall rate of inflation that is disproportionate to their impact on electric company costs. Adoption of the Company's proposal would open the door to upward adjustments to the inflation cap to reflect increased postage rates as well as offsetting adjustments to reflect the disproportionate impact on the CPI of food and housing price increases. The rate reduction standard would not be simple to administer or to explain and could not be applied uniformly across companies.

In contrast, adherence to the Department's implementation of the rate reduction standard provides a standard that is both simple to administer and to explain and which can be applied uniformly across companies.[(5)] While it is true that this standard does not impose an absolute constraint or "cap" on the level of a company's rates, that does not detract from its simplicity. This aspect of the standard is an unavoidable feature of an aggressive legislative plan that necessarily had to provide expressly for circumstances in which a company is unable to achieve compliance with the standard. The General Court imposed an aggressive goal on the industry (some members of which had already agreed to less aggressive rate reductions and some of which had not agreed to any rate reductions) and, although it had to provide for the possibility of companies failing to meet the standard, it directed the Department in those circumstance to explore all avenues to achieve compliance.

The Department Has Not Undertaken The Inquiry Required

By G.L. c. 164, § 1G(c)(3)

The Restructuring Act mandates that the Department undertake a specific inquiry in the event that a company claims it is unable to comply with the rate reduction provisions of G.L. c. 164, § 1B(b) -- "explore any and all possible mechanisms and options ...to achieve compliance" -- and requires that as part of that inquiry it consider proposals from interested parties on "means and mechanisms by which a company could further mitigate its assets in order to comply with said rate reduction of 15 per cent." G.L. c. 164, § 1G(c)(3). In the case at hand, the Department has not yet complied with this mandate. The informal technical conference held on September 27 did not address, much less provide an adequate process on which to base any conclusion on, mechanisms and options to achieve compliance, to say nothing of providing an opportunity for interested persons to examine and present evidence.[(6)] *G.L. c. 30A, §§ 10 and 11. Indeed, the Department proceeded with the Company's proposal as if there were not any issue regarding the compliance of the proposed rates with the rate reduction provision of the Restructuring Act.*

The Department Can And Should Take Action To

Mitigate The Impact Of The Proposed Increase

Although the Department's failure to promptly conduct the inquiry required by G.L. c. 164, § 1G(c)(3), does not require the rejection of the new rates proposed by the Company,[(7)] the Attorney General submits that the Department can and should take immediate steps to mitigate the impact of proposed increases. First, to ensure that the late effective date of the proposed increases does not preclude the Company's customers from electing to cushion the resulting bill impacts through a levelized payment plan, the Company should be required, notwithstanding the ordinary fall cut-off date to elect such plans, to make levelized payment plans available for forty-five days after the first bills are rendered with the increased standard offer rates. Second, the Company should be encouraged to exercise greater flexibility in negotiating payment plans for new arrearages in their customers' accounts. Finally, the Department should give prompt attention to the resolution of a number of issues that have long been pending before the Department in other proceedings and which may provide mitigation of the impact on consumers of the proposed increases. Among these issues are the following:

On December 31, 1999, the Attorney General filed a complaint under G.L. c. 164, § 93 seeking an investigation concerning the Company's electric distribution rates on the basis of evidence that those rates were unreasonable and excessive. Based on information from the Department's 1998 review of the Company's restructuring plan and recent public information, the complaint demonstrated that a rate reduction of approximately $4.1 million was appropriate, which if implemented on a uniform ¢/KWh basis, would lead to a distribution rate reduction of about 0.57¢ /KWh.

In D.T.E. 99-110, the Department is considering arguments that the Company improperly accounted for costs associated with its abandoned investment in the Seabrook nuclear power plant as well as made claimed inappropriate amounts as unrecovered generation-related regulatory assets. (The presiding officer at the "conference" held in connection with the Company's proposal denied the Attorney General's request that the Company provide an estimate of the reduction to its transition charge that would result if the Seabrook issue were resolved in favor of its customers, but based on knowledge and belief the Attorney General submits that if those issues were resolved in favor of the Company's customers the outstanding balance of such costs would be reduced by approximately $942 thousand in the case of the abandoned Seabrook investment and $1 million in the case of generation related, FAS 109 deferred tax regulatory assets.)

The Department Should Consider Creating A Single,

Uniform Fuel Cost Mechanism

Based on the three pending proceedings concerning fuel cost adjustments to rates for Standard Offer service, it appears that the need for some fuel cost mechanism will exist for some time to come, and that the Department and all interested parties would benefit from a more standardized mechanism. While all of the proceedings involve adjustments based on a similar adjustment formula,[(8)] the proposed rates are to be in effect for different periods of time (three months in the case of MassElectric and one month in the case of the Nstar Companies and Fitchburg Gas & Electric Light Company) and the proposals reflect fundamentally different designs: the MassElectric proposal is for a rate intended to collect the actual amount of costs incurred to secure power during their effective period, whereas the Fitchburg Gas & Electric Light Company's proposal is intended to update rates to a level consistent with prices paid by the company for Standard Offer service two months before and the Nstar Companies' proposal is intended to update rates based on an index that does not necessarily bear any relationship to costs they have or will incur to secure Standard Offer power. There is no public policy rationale to support such differing approaches to a common development. A generic investigation would allow the Department to receive and consider input from all interested persons on the question of whether such disparate approaches are necessary and, if not, on the question of which approach should be adopted as a uniform mechanism. In addition, a generic investigation would also provide an appropriate forum to consider the question of whether the Department should consider use of the G.L. c. 10, § 62 Ratepayer Parity Trust Fund to address the bill impacts resulting from the recent increase in fuel prices.

Sincerely,

George B. Dean

Assistant Attorney General

Chief, Regulated Industries Division

cc: Service List

1. As implemented by the Department, Companies have been required to demonstrate compliance with the rate reduction provisions of G.L. c. 164, § 1B(b) by adjusting the benchmark August 1997 rate through the use of "the Consumer Price Index [adjusted] for any forecasts of inflation." December 17, 1999 Letter Order to Electric Distribution Companies, p. 5-6.

2. Although the Attorney General has not received notice of any Department action on his August 22 request, he does understand that the Company did not implement the proposed increase on September 1 and has learned that on September 29, 2000, the Department sent a letter to counsel for the Company, as well as to counsel of Massachusetts Electric Company and the Nstar Companies, directing that companies, "until the Department's review [of pending filings] is completed, continue charging customers at the approved rates."

3. During the course of the September 27, 2000 conference, the Company corrected some of the price data inputs it had used and and modified its filing to show a ratio of 1.1223 and an adjustment of 0.4265¢ based on the twelve month period ending June, 2000. It forecast that the ratio would increase to 1.3545 and that the Standard Offer rate would increase to 5.147¢ by March, 2001. IR-DTE-1-1.

4. December 17, 1999 Letter Order to Electric Distribution Companies, p. 5-6

5. Indeed, in its December 17, 1999 letter order, the Department appears to have resolved most, if not all, of the technical issues associated with its implementation of the rate reduction standard, issues which would necessarily have to be revisited if the new standard advocated by the Company were to be adopted.

6. Past Department rulings have made it clear that information provided at technical conferences is not provided under oath and is not considered evidence. Western Massachusetts Electric Company, D.P.U./D.T.E. 97-120, Transcript March 26, 1998, p. 3.

7. To the extent that the Company's proposed new rates are designed to recoup actual current costs it has or will incur, the Attorney General does not dispute the appropriateness of charging for amounts that are ultimately recoverable from customers as recovery should occur on a current basis in the absence of some continuity concern. Avoiding additional deferrals reduces amount of carrying costs to be paid by the Company's customers as well as the magnitude of the risk that Standard Offer cost deferrals will result in cost shifting among customers if competitive alternatives become available in the future at disparate rates among various groups of customers. Moreover, the increases proposed here appear to leave the Company's Standard Offer service rates below the Companies' actual cost of securing power and the Department has determined that Standard Offer service pricing should, to the extent possible, track market levels. Fitchburg Gas & Electric Light Company, D.T.E. 97-115, pp. 26-31 (1998); Western Massachusetts Electric Company, D.T.E. 97-120, pp. 190-191 (1999).

*8. Notwithstanding the fact that the inputs into the formulae used in each of the three proceedings are identical, the actual data used the individual companies was not the same. Compare April, May and June, 2000 gas prices in **Fitchburg Filing**, Exh. 2, p. 5 of 6 in D.T.E. 00-66 with **Nstar Filing Letter**, Appendix F, p.3. columns 17-19, line 4 in D.T.E. 00-70 and the January 1999 gas prices in IR-DTE-1-1, p. 2 of 3, Column 2 in D.T.E. 00-67 with **Nstar Filing Letter**, Appendix F, p. 2, column 2, line 1 in D.T.E. 00-70*